



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2021-0621; FRL-9085-02-R6]

Air Plan Approval; Oklahoma; Updates to the General SIP and Incorporation by Reference Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving identified portions of two revisions to the Oklahoma State Implementation Plan (SIP) submitted by the State of Oklahoma designee on May 15, 2020, and February 9, 2021. This action addresses revisions to the Oklahoma SIP pertaining to the general SIP definitions under Oklahoma Administrative Code (OAC) Title 252, Chapter 100, Subchapter 1, Section 1-3, and revisions to the Oklahoma SIP to update the incorporation by reference of Federal requirements under OAC Title 252, Chapter 100, Subchapter 2, and Appendix Q.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2021-0621. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214-665-2115, wiley.adina@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our proposed rulemaking published on October 27, 2021 (86 FR 59333). In that document we proposed to approve revisions to the Oklahoma SIP that update the definitions relied on throughout the Oklahoma SIP and update the incorporation by reference dates for Federal requirements. The public comment period for the proposed action closed on November 26, 2021. We received one comment in support of our action. This supportive comment, which is included in the publicly posted docket associated with this action at <https://www.regulations.gov>, restated the purpose of the EPA’s proposed rulemaking and expressed support for our action. Therefore, we are finalizing our action as proposed.

II. Impact on Areas of Indian Country

As stated in the proposed action, following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S.Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were

previously approved by the EPA outside of Indian country.¹ The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).²

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country.³ As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively "excluded Indian country lands").

The EPA's approval under SAFETEA expressly provided that to the extent the EPA's prior approvals of Oklahoma's environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA's approval of Oklahoma's SAFETEA request.⁴ The approval also provided that

¹ A copy of the Governor's July 22, 2020, request can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Document ID No. EPA-R06-OAR-2021-0621-0006.

² In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

³ A copy of EPA's October 1, 2020, approval can be found in the docket for this rulemaking on the <https://www.regulations.gov> Web site. See Document ID No. EPA-R06-OAR-2021-0621-0007.

⁴ The EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit's decision in *ODEQ v. EPA*) located in

future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).⁵

As explained above, the EPA is approving revisions to the general definitions used in the Oklahoma SIP as well as updates to the incorporation by reference provisions to maintain consistency with Federal requirements, which will apply statewide in Oklahoma. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with the EPA’s October 1, 2020, SAFETEA approval, these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands. Because – per the State’s request under SAFETEA – the EPA’s October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

III. Final Action

We are approving, under section 110 of the CAA, revisions to the Oklahoma SIP that update the definitions relied on throughout the SIP and update the incorporation by reference dates for Federal requirements. We have determined that the revisions submitted on May 15, 2020, and February 9, 2021, were developed in accordance with the CAA and the EPA’s regulations, policy and guidance for SIP development.

the state. *See, e.g.*, 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

⁵ On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. *See* <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in Federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). The EPA may make further changes to the approval of Oklahoma’s program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

The EPA is approving the following revisions to the Oklahoma SIP adopted on May 28, 2019, effective September 15, 2019, and submitted to the EPA on May 15, 2020:

- Revisions to OAC 252:100-2-3, Incorporation by Reference;
- Repeal of OAC 252:100, Appendix Q; and
- Adoption of new OAC 252:100, Appendix Q.

The EPA is approving the following revisions to the Oklahoma SIP adopted on June 25, 2020, effective September 15, 2020, and submitted to the EPA on February 9, 2021:

- Revisions to OAC 252:100-1-3, Definitions;
- Revisions to OAC 252:100-2-3, Incorporation by Reference;
- Repeal of OAC 252:100, Appendix Q; and
- Adoption of new OAC 252:100, Appendix Q.

IV. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial,

governmental, and commercial operations or programs and policies.”⁶ The EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public and not as a basis of our final action.

The EPA conducted an EJScreen analysis for census block groups within the State of Oklahoma. The complete report is available in the docket for this action. We reviewed census block group data for the entire state to identify counties that contained census block groups over the 80th percentile for any EJ Index. From this statewide analysis, we identified 11 counties within the state that have census block groups with EJScreen Indexes over the 80th percentile that were targeted for further review using EJScreen 2.0. Of the 11 identified counties, 1 county has census block groups that exceed the 80th percentile in the state for the EJ Index for particulate matter PM_{2.5}, 2 counties have census block groups that exceed the 80th percentile in the state for the EJ Index for ozone, 1 county has census block groups that exceed the 80th percentile in the state for the EJ Index for 2017 Diesel Particulate Matter, 1 county has census block groups that exceed the 80th percentile in the state for the EJ Index for 2017 air toxics cancer risk, 1 county has census block groups that exceed the 80th percentile in the state for the EJ Index for 2017 air toxics respiratory HI, 5 counties have census block groups that exceed the 80th percentile in the state for the EJ Index for traffic proximity, 4 counties have census block groups that exceed the 80th percentile in the state for the EJ Index for lead paint, 5 counties have census block groups that exceed the 80th percentile in the state for the EJ Index for RMP facility proximity, 6 counties have census block groups that exceed the 80th percentile in the state for the EJ Index for hazardous waste proximity, 7 counties have census block groups that exceed the 80th percentile in the state for the EJ Index for underground storage tanks, and 4 counties contain census block groups that exceed the 80th percentile in the state for the EJ Index for wastewater discharge.

⁶ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

The EPA also reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma.⁷ The EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (35 percent versus 40 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (7.8 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is significantly higher than the national average (9.4 percent versus 1.3 percent). The percent of the population that is Two or More races is higher than the national averages (6.3 percent versus 2.8 percent). The percent of people living below the poverty level in Oklahoma is higher than the national average (14.3 percent versus 11.4 percent). The percent of people over 25 with a high school diploma in Oklahoma is similar to the national average (88.6 percent versus 88.5 percent), while the percent with a Bachelor's degree or higher is below the national average (26.1 percent versus 32.9 percent). These populations and others residing in Oklahoma may be vulnerable and subject to disproportionate impacts within the meaning of the Executive orders described above.

This final rule approves revisions to the general definitions germane to the Oklahoma SIP and updates to the incorporation by reference provisions to maintain consistency with Federal requirements. Final approval of these revisions to the implementing definitions of the Oklahoma SIP and incorporation of current Federal requirements will continue to enable the State of Oklahoma to implement control strategies and permitting programs that will achieve emissions reductions and contribute

⁷ See the United States Census Bureau's QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.

to reduced environmental and health impacts on those residing, working, attending school, or otherwise present in vulnerable communities in Oklahoma. This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it should not result in or contribute to emissions increases in Oklahoma.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the Oklahoma regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This action to approve revisions to the Oklahoma SIP that update the definitions relied on throughout the SIP and update the incorporation by reference dates for Federal requirements will apply to certain areas of Indian country as discussed in the preamble,

and therefore has tribal implications as specified in E.O. 13175 (65 FR 67429, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation (by letter dated October 15, 2021) on our proposed rulemaking to tribal governments that may be affected by this action. We received no requests for tribal consultation.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone,

Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 5, 2022.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL – Oklahoma

2. In §52.1920, in paragraph (c), the table titled “EPA Approved Oklahoma Regulations” is amended by revising the entries for “252:100-1-3”, “252:100-2-3”, and “252:100, Appendix Q” to read as follows:

§52.1920 Identification of plan.

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(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS				
State Citation	Title/Subject	State effective date	EPA approval date	Explanation
* * * * *				
CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
Subchapter 1. General Provisions				
* * * * *				
252:100-1-3	Definitions	9/15/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
* * * * *				
Subchapter 2. Incorporation by Reference				
* * * * *				
252:100-2-3	Incorporation by reference	9/15/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	
* * * * *				
Appendices for OAC 252: Chapter 100				
* * * * *				

252:100, Appendix Q	Incorporation by reference	9/15/2020	[Insert date of publication in the <i>Federal Register</i>], [Insert <i>Federal Register</i> citation]	SIP only includes specified portions of 40 CFR parts 50, 51, and 98, as referenced in 252:100, Appendix Q
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[FR Doc. 2022-17241 Filed: 8/15/2022 8:45 am; Publication Date: 8/16/2022]